84-841

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ALEXANDER L. STEVAS,
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW A. KASHETTA, Petitioner
VS
LOTTIE L. KASHETTA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

(Order entered 6-12-84 in case of Lottie L. Kashetta vs Andrew A. Kashetta, Petitioner, No. 242 E.D. Allocatur Docket 1984)

ANDREW A. KASHETTA, pro se
R.D. #1, Jermyn, Pa. 18433

Date: 10-30-84

22 pp

QUESTION PRESENTED FOR REVIEW

1. Whether fraud was practiced on the courts which deprived Petitioner of due process and equal protection of the laws secured by the U. S. Constitution, Amendment 14, in that the attorneys for Petitioner took $2,250.00 from him for which they assured him a prompt divorce and an equal partition of the marital real estate but, instead, in collusion with the opposition and without notice to or consent of Petitioner, filed a "PRAECIPE TO DISCONTINUE" Petitioner's "COMPLAINT IN DIVORCE".

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CITATIONS:

Pa. Act of 5-2-29, P.L. 1257, 23 P.S. Sec. 1 etc.(repealed).	4
Pa. Act of 4-2-80, P.L. 63, 23 P.S. Sec. 101 etc.	4, 7
U. S, Constitution, Amendment 14.	i, 3, 6, 8

APPENDIX:

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IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW A. KASHETTA, Petitioner
VS
LOTTIE L. KASHETTA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The Petitioner Andrew A. Kashetta, pro se, respectfully prays that a writ of certiorari issue to review the ORDER of the Supreme Court of Pennsylvania entered in this proceeding on 6-12-84.

OPINION BELOW

The Supreme Court of Pennsylvania rendered no opinion. It entered an Order on 6-12-84 in the case of Lottie L. Kashetta vs Andrew A. Kashetta, Petitioner, No. 242 E.D. Allocatur Docket 1984, denying Petitioner's "PETITION FOR ALLOWANCE OF APPEAL". A copy of the Order is attached as Appendix A-7.

On 3-30-84, the Superior Court of Pennsylvania entered its "OPINION PER CURIAM" quashing Petitioner's appeal. A copy of that opinion is attached as Appendix A-3.

On 3-30-84, the Superior Court of Pennsylvania entered its "JUDGMENT" quashing the appeal. A copy of that "JUDGMENT" is attached as Appendix A-6.

On 7-31-81, the Court of Common Pleas of Lackawanna County entered an "ORDER", refusing to set aside its "ORDER" entered on 7-17-81. A copy of that "ORDER" is attached as A-1.

On 7-17-81, the Court of Common Pleas dismissed Petitioner's preliminary objections. A copy of that "ORDER" is attached as Appendix A-1.

JURISDICTION

On 6-12-84, the Supreme Court of Pennsylvania entered its order, "PETITION DENIED" (A-7).

The Supreme Court of the United Sates extended the time to file a petition for a writ of certiorari until 11-3-84.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment 14:

> No State shall...deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On 8-31-76 in a related case, a "Complaint In Divorce" was filed by attorney Popeck for the Petitioner, the case of Andrew A. Kashetta vs Lottie Kashetta, Court of Common Pleas of Lackawanna County, No. 1596 Sep. Term 1976, for a divorce under the

then existing old Pa. Act of 5-2-29, P.L. 1257, 23 P.S. (repealed); the law prior to Pa. Act of 4-2-80, P.L. 63, 23 P.S. 23.

On 4-19-79 a "COMPLAINT IN EQUITY" to No. 1, May Term 1979 was filed for Petitioner by his attorneys Anthony Popeck and Ralph Carey, to recover the husband's farm tools and one-half of the marital real estate.

But, on 6-5-81, at 12:05 p.m., attorney Popeck, without NOTICE to or CONSENT of Petitioner, filed a "PRAECIPE TO DISCONTINUE" the husband's "COMPLAINT IN DIVORCE", No. 1596 Sep. Term 1976.

Less than 4 hours later, on 6-5-81, at 3:51 p.m., attorneys Levy, Preate and Purcell for the wife filed a "COMPLAINT" in divorce, Lottie L. Kashetta vs Andrew A. Kashetta, No. 81 Civ 3564, under the new Pa. Divorce Code, which is much more favorable to a wife, allowing not only partition of marital real estate but also alimony.

The "PRAECIPE TO DISCONTINUE" did not come to the attention of Petitioner until 2 months after the divorce case was discontinued.

On 1-29-82, the attorneys for Petitioner in collusion with the attorneys for Respondent, caused the Court of Common Pleas to dismiss Petitioner's "COMPLAINT IN EQUITY", No. 1, May Term 1979.

Because of that fraud, Petitioner filed an appeal on 3-1-82 of that dismissal to the Superior Court of Pennsylvania, pro se.

Attorney William J. Purcell, formerly with said law firm of "Levy, Preate & Purcell", was sentenced on 2-15-84 to 30 months in Federal prison followed by 5 years of parole and directed to make restitution of $846,500.00, by U. S. District Court Judge William Cadwell in Harrisburg, Pa., for presenting counterfeit certificates in return for loans totaling $846,500.

Petitioner raised the federal question sought to be reviewed in his "MEMORANDUM OF LAW" and "BRIEF TO SUPPORT MOTION TO SET ASIDE ORDER" entered on 7-17-81, in the Court of Common Pleas, the question of:

> due process and equal protection of the laws secured by the U. S. Constitution, Amendment 14,

which was overlooked or disregarded by the court.

The same federal question was raised on appeal in the Superior Court of Pa., which was also overlooked by the court.

Also, in the Supreme Court of Pennsylvania, the same federal question was raised in Petitioner's "PETITION FOR ALLOWANCE OF APPEAL" under "QUESTIONS PRESENTED", and under "REASONS RELIED UPON FOR ALLOWANCE OF APPEAL, quoted as follows:

> "Deprived of due process and equal protection of the laws secured by the U. S. Constitution, Amendments 5 and 14."

REASONS FOR GRANTING THE WRIT

Petitioner paid his attorneys, Anthony Popeck and Ralph Carey, $2,250.00 to promptly litigate to recover his farm tools and other credits of $47,005.00, partition the marital real estate, and obtain a divorce.

Instead, Petitioner's attorneys by improper and collusive misconduct with the Respondent's attorneys "Levy, Preate & Purcell", on 6-5-81, discontinued Petitioner's "COMPLAINT IN DIVORCE", No. 1596 Sep. Term 1976, without NOTICE to or consent of Petitioner, so that the attorneys for the wife could file a "COMPLAINT" for divorce under the later 1980 Divorce Code, supra.

The purpose of the collusive misconduct of both sets of attorneys is to cheat and defraud Petitioner out of his property.

Petitioner, a former coal miner and farmer, is plagued with black lung disease which condition is seriously aggravated by the unconscionable misconduct of the attor-

neys to the point of being unbearable.

A glance at the record shows that said attorneys practiced a fraud upon the courts which deprives Petitioner of due process and equal protection of the laws secured by the U. S. Constitution, Amendment 14, which fraud should be purged from the record, promptly.

The specific facts set forth above, conclusively show that the state courts failed to decide the important question of federal law, due process and equal protection of the laws, which should be settled by this Court.

This Petition For A Writ Of Certiorari is directly related to the other Petition For A writ Of Certiorari, the case of:

ANDREW A. KASHETTA, Petitioner
VS
LOTTIE L. KASHETTA, Respondent
PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA
No. 698 PHL E.D. Allocatur Docket 1983,

which is being simultaneously filed in this Supreme Court of the United States.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the Order of the Supreme Court of Pennsylvania, or in the alternative:

1. Grant Andrew A. Kashetta a divorce;

2. Award Andrew A. Kashetta judgment for $47,505.00, with interest:

3. Order equal partition of the marital real estate; and

4. Grant such other relief which is fair and just.

Respectfully submitted,

Andrew A. Kashetta, pro se
R.D. #1, Jermyn, Pa.
18433

DATE: 10-30-84

APPENDIX

* * * * * * * *

IN THE COURT OF COMMON PLEAS OF
LACKAWANNA COUNTY

IN DIVORCE

81 CIV. 3564

LOTTI KASHETTA
VS.
ANDREW KASHETTA

O R D E R

NOW, this 17th day of July, 1981, it appearing to the court that defendant, pro se, having filed preliminary objections in the above entitled matter; and it further appearing that the said defendant has failed to file his Memorandum of law in support of same within ten (lo) days as required by Local Rule 1028(b); it is hereby,

ORDERED and directed that the preliminary objections be dismissed.

BY THE COURT

S/ Kosik P.J.

O R D E R

NOW, this 31 day of July 1981, after

consideration of the action of Andrew Kashetta, it is hereby,

ORDERED, that the motion of Andrew Kashetta to set aside an order of court entered July 17, 1981 is denied.

By the Court,

S/ Kosik P.J.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 2066 Philadelphia 1981

LOTTIE KASHETTA
V.
ANDREW KASHETTA,
Appellant

Appeal from the Order of the Court of Common Pleas, Civil Division, of Lackawanna County at No. 81 Civil 3564.

Before: WICKERSHAM, WATKINS and MONTGOMERY, JJ.

OPINION PER CURIAM: Filed MAR 30 1984

Lottie L. Kashetta filed an action in divorce in the Court of Common Pleas of Lackawanna County against Andrew A. Kashetta, her husband since October 14, 1939. The complaint of Lottie L. Kashetta was filed in June of 1981 whereas Andrew A. Kashetta had filed a divorce action in August of 1976 to No. 1596 September Term 1976, which action was discontinued on the 5th day of June, 1981.

On June 29, 1981, Andrew A. Kashetta filed preliminary objections to the com-

plaint in divorce, which preliminary objections were dismissed by order of July 17, 1981 by President Judge Edwin M. Kosik. Thereafter, Andrew Kashetta filed a motion to set aside the order of July 17, 1981, which motion was denied July 31, 1981 by the court order. Thereafter, Andrew Kashetta filed a notice of appeal to this court from the July 17, 1981 order.[1] We will quash this appeal as being interlocutory. As we said in Lyons v. Bechtel Corporation, 294 Pa. Super. 596, 440 A.2d 625 (1982):

> Appellants have brought this appeal alleging that the order of the court below determined a question of jurisdiction and is thus appealable pursuant to Pa.R.A.P. 341, Final Orders. Though orders dismissing a litigant's preliminary objections predicated upon forum non conveniens are considered questions of jurisdiction, Schachtel v. Bloche, 272 Pa. Super. 32, 414 A.2d 654 (1980), the order of the court below denied appellants' preliminary objections on procedural grounds, not on the merits. Therefore, the lower court order was interlocutory and unappealable. Grier v. Scientific Living, Inc., 253 Pa. Super. 113, 384 A.2d 1254 (1978).
>
> The court below, by Judge Greenberg, has made no jurisdictional deter-

> mination on the basis of forum non conveniens or otherwise. Appellants, erroneously, argue that the amended order of September 25, 1980 overruled their preliminary objections on the merits and not for procedural defects. Though the language of Judge Greenberg's order might be considered ambiguous, Judge Greenberg's opinion of October 10, 1980 is unquestionably clear that the dismissal was procedural and not on the merits. The court's decision was simply to overrule the preliminary objection, not because it found jurisdiction to be proper but because appellants failed to timely file their preliminary objections. Thus, Grier, supra, is controlling and requires that this appeal be quashed.

Id. at 598, 440 A.2d at 626 (footnote omitted).

So too, in the case sub judice, the order of the court below denied appellant's preliminary objections on procedural grounds not on the merits. Therefore, the lower court order was interlocutory and unappealable.

Appeal quashed and case remanded for further proceedings not inconsistent with this opinion. Jurisdiction relinquished.

FOOTNOTE

[1] In this appeal appellant raises the following issue:

> Whether Andrew Kashetta is deprived of due process and equal protection of the laws secured by the U.S. Constitution, Amendments 5 and 14.

Brief for Appellant at 2.

* * * * * * *

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the appeal from the Order of the Court of Common Pleas of LACKAWANNA be, and is QUASHED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. JURISDICTION IS RELINQUISHED.

BY THE COURT:

S/ J. Haniel Henry
Prothonotary

Dated: March 30, 1984

BEST AVAILABLE COPY

SUPREME COURT OF PENNSYLVANIA
Eastern District

June 19, 1984

Andrew A. Kashetta
R.D. No. 1
Jermyn, PA 18433

Re: Lottie L. Kashetta v.
Andrew A. Kashetta, Petitioner, No. 242 E.D.
ALLOCATUR DOCKET 1984

Dear Mr. Kashetta:

This is to advise you that the following Order has been endorsed on your Petition for Allowance of Appeal, filed in the above-captioned matter:

"June 12, 1984.

PETITION DENIED.

Per Curiam"

Very truly yours,

S/ Patrick Tassos
Deputy Prothonotary